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October 23, 2006

FILED ELECTRONICALLY AND ORIGINAL VIA 1st CLASS MAIL SERVICE

The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

Enclosed is the original and one copy of the **Petition for Reconsideration** for filing on behalf of the Joint Petitioners in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

JJP/cr
cc:
all parties of record
Enclosures

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH COMMUNICATIONS CORP., NUVOX COMMUNICATIONS, INC., KMC TELECOM V, INC., KMC TELECOM III LLC, AND XSPEDIUS [AFFILIATES] OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED	)	**Docket No. 2005-57-C**

PETITION FOR RECONSIDERATION

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PETITION FOR RECONSIDERATION

NuVox Communications, Inc. ("NuVox") and Xspedius Communications, Inc., with its operating subsidiaries ("Xspedius"), collectively the "Joint Petitioners," hereby file this Petition for Reconsideration, pursuant to S.C. Code 58-9-1200 and S.C. Code Regs. 103-836, of certain findings in the South Carolina Public Service Commission's ("Commission's") Order Ruling on Arbitration, dated October 11, 2006 ("*Order*").[1] Joint Petitioners focus this discussion on points in the Order that are not clear as to their implementation, may not fully reflect evidence in the record, or are out of keeping with laws and rules governing interconnection and unbundling, particularly the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* ("1996 Act") and the implementing rules and orders of the Federal Communications Commission ("FCC"). As set out herein, certain findings, inferences and conclusions of the *Order* are in error

[1] South Carolina Public Service Commission Order, Docket No. 2005-57-C, Order Ruling on Arbitration, Order No.2006-531 (Oct. 11, 2006) ("*Order*").

of law, violate constitutional and statutory provisions, and are arbitrary and capricious or characterized by an abuse of discretion.

Joint Petitioners believe that the Commission's findings for Issues 4, 5, 6, 9, 12, 97, 100, 102, and 103 require further consideration. Joint Petitioners respectfully request that the Commission reconsider the *Order* on these items and adopt Joint Petitioners' position and proposed language. As support for this request, Joint Petitioners respectfully submit the following.

REQUEST FOR RECONSIDERATION

ISSUE NO. 4

Issue Statement: What should be the limitation on each party's liability in circumstances other than gross negligence or willful misconduct?

The *Order* concluded that BellSouth's proposed language, which limits BellSouth's liability to service credits, should be adopted because, among other things, there is precedent for it. The Commission found that "[b]oth State and federal courts in South Carolina have ruled that sound public policy supports limiting a telephone company's liability for negligent acts that are related to regulated operations." *Order* at 5. The Commission further found that BellSouth's proposed language "embodies the same standard that applies to BellSouth's retail customers" and is "the same standard that has governed the relationship between BellSouth and Joint Petitioners for the last eight years." *Id.* at 7. This rationale is misplaced and deserves reconsideration.[2]

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[2] The Commission, borrowing from BellSouth, draws support from a "*Mississippi Order*" in a companion arbitration docket between the parties. *See, e.g., Order* at n.24. As of this date the Mississippi Commission has not adopted a final order in the parties' companion arbitration. All that exists is an arbitration panel recommendation to that Commission.

With due respect, the Commission simply should not rely on a claimed standard industry practice of awarding bill credits, as such a claim is doubtful given that BellSouth does not deny that it negotiates less stringent limitation of liability provision in its own customer contracts. *See* JP Brief at 8, *citing* GA Tr. at 1000:11-14 (where Ms. Blake notes that BellSouth will grant more favorable terms where "other provisions in there...justify accepting that additional risk").[3] This quite clearly contradicts the Commission's rationale that the same standard applies to BellSouth's retail customers. Nor should the Commission rely on past contractual relationships between parties, for the market has evolved since the advent of competition and since Joint Petitioners executed their first agreements *eight years* ago (the first of three, including the subject agreement). Additionally, the Commission overlooked record evidence that other carriers in the industry negotiate such provisions in interconnection agreements and in customer service agreements. As Joint Petitioners have duly noted and described, there are other industry agreements where liability has been expanded to more than just bill credits. *See, e.g.,* JP Brief at 9 (identifying a NuVox-Alltel interconnection agreement which provides liability up to $250,000 for harm caused by negligence and an Xspedius template contract which provides liability for "mistakes, omissions, interruptions, delays, errors or defects in service" capped at "$100,000 or five (5) months' worth of paid monthly recurring charges"). The Commission's reasoning, therefore, is quite flawed in finding that "Joint Petitioners are aware of no interconnection agreement that contains language...identical or similar to what they propose here, and [neither] Joint Petitioner [has] the type of limitation of liability they are

[3] Ms. Blake made a similar statement at the South Carolina hearing: "I can't say 100% we do or we don't" (responding to the question, "isn't it true...BellSouth may, and in fact does, negotiate limitation of liability terms in its CSAs here in the state of South Carolina?"). SC Tr. at 407:21-25.

proposing in their tariffs or standard retail contracts with South Carolina customers." *Order* at 7. The record evidence simply refutes the Commission's analysis in this regard.

Yes, the record evidence does not provide "identical language," as the Commission so notes. Nevertheless, the evidence does provide language "similar" to what Joint Petitioners propose and certainly refutes the contention that BellSouth's proposal is the industry standard. That existing interconnection agreements or customer contracts do not replicate exactly what Joint Petitioners propose provides no cause to reject incorporating their language into the subject agreement here, especially when such language provides for a reasonable and *proportional* remedy in a time when competition has caused customer contracts, as well as interconnection agreements, to move away from the outdated remedial measure of awarding only bill credits (evident by BellSouth's testimony and the contracts noted above). The record evidence shows a trend in the industry, and Joint Petitioners' language keeps with that trend in a competitively balanced manner. Joint Petitioners propose a proportional solution under which risk is tied directly to revenues. BellSouth's potentially greater exposure (in straight dollar terms) is due solely to the fact that BellSouth is positioned to reap significantly greater revenues under the interconnection agreements.[4]

Despite the reasonableness of Joint Petitioners' proposal, and the evidence to support it, the Commission disregarded Joint Petitioners' use of other vendor service contracts and Joint Petitioners own contracts (those with differing liability terms), noting that these types

[4] The Commission's reliance on BellSouth rhetoric regarding its liability being "capped at more than $8 million, while NuVox's liability to BellSouth would be capped at $2,700", Order at 5, is entirely misplaced. As explained repeatedly in this docket and in others now part of the record herein, the proposed 7.5% cap on liability is tied to revenues received under the Agreement and are entirely proportional. BellSouth's rhetoric contemplates that it will have negligently caused NuVox over $100 million in damages. It is surpassing strange that the Commission thinks that this does not warrant comment and that NuVox should bear this magnitude of costs of BellSouth's negligence.

of agreements are different than interconnection agreements because, with interconnection agreements, BellSouth cannot "walk away from the table." *Order* at 9. In some respects, the Commission is correct, for interconnection agreements may not be "typical commercial contracts" because of the regulatory element that underlies them. *Id.* at 8. Nevertheless, BellSouth can walk away from the negotiating table, but when it does, the matter goes before the Commission so that it, under authority mandated by the Act and delegated by the Federal Communications Commission, can determine what best serves local competition and the public interest. The Commission has failed to fulfill its role here, as its decision grants BellSouth an extreme competitive advantage over Joint Petitioners. With BellSouth being able to offer customers less-stringent liability terms, Joint Petitioners will find it difficult to attract new customers and will likely lose existing customers in the future to BellSouth (who is free to negotiate less stringent limitation of liability terms in its CSAs with no corresponding downside). This result is unfair and runs contrary to the competitive construct of the Act.

As for the Commission turning to past South Carolina state and federal court rulings, it should be noted that the *Pilot* and *Parnell* decisions came many, many years prior to the 1996 Act establishing competition. *Order* at 5. Although public policy prior to the Telecom Act may have supported limiting the liability of a monopoly telephone company to an end-user customer, the public policy considerations in a competitive environment (*i.e.*, promoting competition for consumer benefit) supports Joint Petitioners' proposal. The issue in this Docket, in contrast to *Pilot* and *Parnell,* is not whether a company has the legal right to limit its liability for negligence, but rather how the interests of the parties should be balanced when liability limitations are modified. If BellSouth strays from awarding bill credits for purposes of gaining a competitive edge (something BellSouth never would have done prior to the Telecom Act and the

existence of competition), then BellSouth should not be able to encumber Joint Petitioners' ability to do the same. These early court decisions are outdated in today's competitive environment, do not address the specific issue presented by the Joint Petitioners, and should not be relied on to address this issue. Notwithstanding the outdated nature of these decisions, Joint Petitioners' proposed language does not thwart the public policy that is encompassed in them, as liability is limited, quite significantly, to just 7.5% of the amounts paid or payable at the time a claim arises. Joint Petitioners' proposal therefore keeps with the referenced public policy while making necessary adjustments for today's competitive environment.

Moreover, Joint Petitioners have explained in great detail why their proposed cap of 7.5% of amounts paid or payable is commercially reasonable. *See* JP Br. at 6-17. As noted in Joint Petitioners' Post-Hearing Brief, although improperly disregarded by the Commission, service contracts generally include liability terms that provide relief for harm caused through negligence. JP Brief at 11. At hearing, Mr. Russell explained that Joint Petitioners' proposal is in keeping with contracts of other vendors and service providers. Tr. at 399:2-3. Joint Petitioners filed written testimony discussing these contracts, which often include liability for negligence up to "15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract." *See* JP Test. at 24:16-18; JP Brief at 11. What Joint Petitioners propose is a compromise between the liability provisions of these contracts and the terms proposed by BellSouth.

There also is no basis for BellSouth's proposed language to be found in Sections 251 or 252 of the Act. To be sure, there is nothing in Section 251 of the Act that indicates that BellSouth's negligent failure to comply with its obligations should be of no consequence to BellSouth and that the costs associated with such failures should be assigned solely to the Joint

Petitioners. In short, BellSouth's proposal, which leaves Joint Petitioners solely responsible for 100% of the costs associated with BellSouth's negligence, is not reasonable in any context, even a regulated one.

Joint Petitioners' proposed 7.5% liability cap is a reasonable and proportional balance between the risk of incurring harm versus the revenues that will be generated by each party under this Agreement. Accordingly, the Commission should reconsider its *Order* and adopt Joint Petitioners' position and proposed language. At the very least, this issue should be resolved by a finding that each party will be responsible for their own negligent acts in providing services under the Agreement. Nothing in Section 251 or 252 empowers the Commission to foist the costs of BellSouth's negligence on a requesting carrier.

ISSUE NO. 5

Joint Petitioner Issue Statement: To the extent that a party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User Contracts (past, present, and future), should it be obligated to indemnify the other Party for liabilities not limited?

BellSouth Issue Statement: If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?

This is an issue of critical importance for both competitors and consumers. Unfortunately, the premise the Commission adopts in the very first sentence of its decision on this issue, *Order* at 10 (finding that BellSouth should be put in a position as though all end user customers were its customers), is an affront to the core competitive construct and requirements of the 1996 Act and Section 251, in particular, which clearly do not contemplate that BellSouth be treated as though it maintains a government sanctioned monopoly. The Commission's conclusion that the Joint Petitioners must adhere to BellSouth's unilaterally imposed and changeable tariffed liability provisions – or otherwise bear the resulting risks – severely limits

the Joint Petitioners' ability to gain and maintain customers by offering more flexible and commercially reasonable liability terms. And, in turn, South Carolina consumers suffer as adoption of BellSouth's proposal makes it more difficult for competitors to deliver to them more favorable limitation of liability provisions.

The Commission's acceptance of BellSouth's argument that there is a specific industry standard for limitation of liability that applies to all carriers is in error. *Order* at 10. The record in this proceeding demonstrates that both the Joint Petitioners and BellSouth develop varying limitation of liability provisions in their tariffs and customer service arrangements ("CSAs"). As explained with respect to Issue 4, above, limitation of liability provisions are indeed quite variable. The final ruling here should not require the use of an "industry standard" that does not in fact exist, but rather is set unilaterally by BellSouth in its own tariffs and then modified to suit BellSouth's own business goals in its own CSAs. Instead, the Commission should simply require that the Joint Petitioners' limitation of liability provisions be "commercially reasonable". At a minimum, the final order, and the subsequent implementing contract language, should be limited to the liability provisions contained in the Joint Petitioners' tariffs and not their CSAs.[5] To do otherwise would unfairly restrict the Joint Petitioners' ability to negotiate limitation of liability provisions in their CSAs and compete with BellSouth and its use of CSAs, especially when BellSouth negotiates non-standard liability provisions in its own CSAs. Under the *Order*, BellSouth can stray from the supposed "industry standard," but Joint Petitioners cannot without being left holding the bag for BellSouth's negligence. This is a

[5] Joint Petitioners are willing to match BellSouth's tariff terms in their respective tariffs, although Joint Petitioners believe such action goes against the principles of competition, but Joint Petitioners must be allowed to negotiate liability language in their CSAs, as BellSouth does in its CSAs, without incurring an obligation to indemnify BellSouth for damages caused by BellSouth's negligence. To require otherwise perpetuates an unfair advantage that BellSouth enjoys, especially in the negotiation of CSAs.

competitive imbalance. Thus, the *Order*, as it stands, creates an unfair advantage to BellSouth and would in effect penalize the Joint Petitioners for continuing to offer commercially reasonable limitation of liability provisions that are more flexible and pro-consumer than those BellSouth prefers to impose – except when BellSouth finds it necessary to negotiate such terms in order to win a customer from, or keep a customer from switching to, a competitor such as the Joint Petitioners.

The Joint Petitioners have maintained throughout this proceeding that in order to compete with BellSouth, the incumbent, they must have the flexibility to negotiate CSAs with less stringent limitation of liability provisions. JP Br. at 17-21. Moreover, ***BellSouth is unable to assert that it subjects all of its own customers to the same rigid limitation of liability provisions contained in its tariffs.*** *See* JP Brief at 8, *citing* GA Tr. at 1000:11-14, where Ms. Blake notes that BellSouth will grant more favorable terms where "other provisions in there...justify accepting that additional risk"). This demonstrates that both the Joint Petitioners and BellSouth incorporate liability provisions into their CSAs that may vary from what BellSouth includes in its tariffs to win a customer in the competitive marketplace.[6] Accordingly, the Commission should not strip the CLECs of their competitiveness by forcing them to use BellSouth's *tariffed* limitation of liability provisions in CSAs that must be competitive with BellSouth non-tariffed CSA offerings. At a minimum, the Commission should limit its finding to the Joint Petitioners' tariffs and provide that a standard of commercial reasonableness applies to the parties' use of limitation of liability provisions used in CSAs.

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[6] In responding to questions before the Georgia Commission, BellSouth witness Kathy Blake stated that she is "not familiar with any of the details in a specific contract" regarding liability, but she has never denied that BellSouth's customer contracts sometimes provide more than mere bill credits. *See* GA Tr. at 999:11-12. BellSouth should not rewarded for the claimed ignorance of the witness it presented as being most knowledgeable on the issue (Ms. Blake was produced as BellSouth's deposition witness, as well).

The Commission should not require the Joint Petitioners to adhere to an "industry standard", dictated and subject to revision only by BellSouth, in order to limit BellSouth's potential exposure to liability from entities other than Joint Petitioners. As noted previously, BellSouth's concept that liability provisions should be crafted as though all customers are BellSouth customers is an affront to the Section 251 competitive standards which must be imposed through this arbitration. Rather than impose BellSouth's "industry standard", the Commission here should require that Joint Petitioners' limitation of liability provisions meet a "commercially reasonable" standard. As stated in their Post-Hearing Brief, the Joint Petitioners believe that it is incumbent upon them to incorporate commercially reasonable limitation of liability terms in all tariffs and contracts. *See* JP Br. at 19. Accordingly, under the Agreement and applicable commercial law, BellSouth is protected from any damages to the extent Joint Petitioners fail to act with due care and commercial reasonableness. *Id.*

For these reasons, the Joint Petitioners request that the *Order* be reconsidered here to reject the language proposed by BellSouth for Issue 5. To the extent any language should be included in this Agreement that purports to limit directly or indirectly the terms of service under which Joint Petitioners provide service to their South Carolina customers, such language should state nothing more than that the limitation of liability language included in Joint Petitioners' tariffs and CSAs must be commercially reasonable.

ISSUE NO.6

Issue Statement: How should indirect, incidental or consequential damages be defined for purposes of the agreement?

The Commission has rejected Joint Petitioners' language on the ground that it is "unnecessary and defeats limitation of liability protections provided by language adopted by the

Commission." *Order* at 12. Contrary to this finding, Joint Petitioners' language is indeed necessary, for it helps avoid confusion through clearer definitions of "indirect, incidental and consequential" damages. This clarity is especially valuable here, where "state law" may not wholly define such damages and BellSouth has not to any degree articulated what "state law" instructs on this topic.

Joint Petitioners' proposed language for Item 6 simply makes clear that all parties shall remain responsible for damages that are direct and foreseeable, and that such responsibility should not be avoided on grounds that there has been an agreement to eliminate "indirect, incidental, and consequential" damages. *See generally* JP Br. at 21-24; Exhibit A at 3. This cannot be considered unreasonable, in any respect. Given that a chief aim of contract drafting is to make provisions – especially their defined terms – as clear as possible, it is reasonable that the definition of "indirect, incidental and consequential damages" expressly excludes direct and foreseeable damages.

Notably, the Commission agrees with Joint Petitioners that "damages that are direct and foreseeable, however, cannot also be indirect, incidental or consequential." *Order* at 13. This mutual understanding demonstrates that the Commission is not confused by Joint Petitioners' language, thus allaying the Commission's concerns in adopting it. In addition, it demonstrates that Joint Petitioners' aim of providing a more precise definition of "indirect, incidental and consequential" damages is in the interest of both parties and ensures the greatest clarity in the Agreement.

Joint Petitioners note that the Georgia Commission, in its companion arbitration, rejected BellSouth's position and adopted, in large part, the Joint Petitioners' language proposal, with a single modification that struck from Joint Petitioner's language the "vis-à-vis its End

Users" portion of the language.[7] The Administrative Law Judge in Louisiana's companion arbitration made a similar recommendation.[8] Striking this portion of Joint Petitioner's language should resolve this Commission's concerns as well, given its misguided belief that "as long as the Joint Petitioners brought a claim for damages incurred by the Joint Petitioners 'vis-à-vis its End Users", BellSouth's liability to Joint Petitioners could be unlimited." *Order* at 13. Joint Petitioners' precise and carefully worded language, contrary to the Commission's beliefs, is not unnecessary, nor is it in contravention of state law, and, to provide additional clarity to the Agreement, Joint Petitioners respectfully request that the Commission reverse its initial decision and adopt their language for Item 6 with the same modification made in Georgia and in the Louisiana ALJ's proposed recommendation.

ISSUE NO. 9

Issue Statement: Should a court of law be included in the venues available for initial dispute resolution for disputes relating to the interpretation or implementation of the Interconnection Agreement?

The Commission should reconsider its *Order* and adopt Joint Petitioners' language on this issue, or to at least provide clarification, as its finding potentially upends a venue right that is included in the parties' existing agreements, which right has been included in interconnection agreements since the passage of the 1996 Act. This should be cause enough for the Commission to reconsider its decision and rule in Joint Petitioners' favor, as the Commission

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[7] *See Joint Petition for Arbitration of NewSouth Communications Corporation et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended*, Docket No. 18409-U, Order on Unresolved Issues at 5-7 (GA P.S.C. July 7, 2006) ("*Georgia Order*").

[8] *Joint Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Docket No. U-27798, Proposed Recommendation of Administrative Law Judge at 7-8 (La. P.S.C. Sept. 12, 2006) ("*Proposed Recommendation*").

relies on this exact same rationale (*i.e.*, language in past and existing agreements) for its decisions in favor of BellSouth on Issues 4 and 5. *See Order* at 7 ("the same standard has governed the relationship between BellSouth and the Joint Petitioners for the last eight years"); *see also id.* at 11 ("The language the Commission adopts is in the Joint Petitioners' current interconnection agreements, and it has never been the subject of any dispute"). Notwithstanding, by finding that the Commission is the appropriate place to resolve disputes on matters normally considered to be within the expertise of the Commission, the Commission's conclusion would appear to improperly strip the parties of their rights to otherwise avail themselves of federal and state courts of competent jurisdiction. Further, the Commission proposes to incorporate ambiguity into the Agreement by leaving open what normally falls into the "expertise" of the Commission. *Order* at 10. Such ambiguity can lead to costly and inefficient gamesmanship when disputes arise.

The range and scope of disputes that could arise under the Agreement is tremendous. Based on no record evidence whatsoever, the Commission erroneously concludes that Joint Petitioners desire to bring "all" disputes to a court of law "in the first instance". *Order* at 16. Joint Petitioners have never maintained that position. Indeed, they have consistently maintained that it is likely that the Commission will be the best venue for resolving many disputes that may arise out of the Agreement. However, the Commission certainly will not be the only proper forum for all disputes – even for those within its jurisdiction and expertise. The Commission therefore should not foreclose the Joint Petitioners' options to seek resolution in alternative venues.

Moreover, the Commission appears to overlook the utility of the legal principle of primary jurisdiction. Even if the Joint Petitioners were to seek resolution in a court of law, the

court can make a primary jurisdiction referral to the Commission when the court feels it does not have the required expertise. Therefore, given the doctrine of primary jurisdiction, a party is able to choose the forum it wishes to litigate a dispute, as is its legal right, while at the same the Commission's expertise is preserved and can be turned to at any time.

Given that the Commission, in its *Order*, often turns to the decisions in companion arbitrations, Joint Petitioners note that the findings in North Carolina, Georgia, and Tennessee have been in their favor.[9] The North Carolina Commission adopted Joint Petitioners' proposal for this issue.[10] The Georgia Commission also determined that parties are not precluded from seeking to have disputes arising out of interconnection agreements resolved initially in a court of law.[11] The Tennessee Regulatory Authority has not released a final order in its companion arbitration between the parties, but the Authority has rendered a vote in the arbitration proceeding finding that courts of law may be included as forums for initial resolution

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[9] The Florida Commission also reluctantly ruled in Joint Petitioners' favor on this issue. *See Joint Petition for by NewSouth Communications Corporation et al .for Arbitration of Certain Issues Arising in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 040130-TP Final Order Regarding Petition for Arbitration at 15, Order No. PSC-05-0975-FOF-TP (Florida P.S.C. Oct. 11, 2005). The *Mississippi Panel Recommendation* adopts the Florida Commission's order in large part and thus is in Joint Petitioner's favor on this issue. *See Joint Petition for Arbitration by NewSouth Communications Corporation et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 2004-AD-094, Recommendation of the Arbitration Panel to the Mississippi Public Service Commission at 23 (Miss. P.S.C. December 12, 2005) ("*Mississippi Panel Recommendation*").

[10] *See Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Communications, Inc.*, Docket No. P-772, Sub 8 *et al.*, Recommended Arbitration Order at 16-18 (N.C.U.C. July 26, 2005) ("*NC Recommended Arbitration Order*"), *aff'd by Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Communications, Inc.*, Docket No. P-772, Sub 8 *et al.*, Order Ruling on Objections and Requiring the Filing of the Composite Agreement at 76 (N.C.U.C. Feb. 8, 2006) ("*NC Final Order*"); *see also* JP Brief, Attachment 28.

[11] *Georgia Order* at 10.

of interconnection agreement disputes, although such a court may decline to exercise or determine that it lacks jurisdiction.[12]

This Commission cannot lawfully restrict the jurisdiction of state or federal courts or the parties' rights to avail themselves of dispute resolution by a court of competent jurisdiction. For the foregoing reasons, the Commission should reconsider its *Order* and adopt Joint Petitioners' proposal, which maintains the *status quo* by allowing the parties, and not the Commission, to decide the venue to file their claims.

ISSUE NO. 12

Issue Statement: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the parties?

The importance of this issue cannot be overstated, as it goes to the very fabric of the Agreement. The Commission's conclusion in the *Order* threatens to upend the foundation upon which negotiations were conducted and agreed-upon language was crafted. Moreover, the Commission's finding is contrary to Georgia contract law, which, by agreement of the parties, governs the Agreement and requires that exceptions to Applicable Law be negotiated by the parties and be expressly incorporated into the Agreement. The Commission's apparent assumption that it may impose on Joint Petitioners exceptions to Applicable Law, through this 252 interconnection arbitration, is erroneous and should be reconsidered. The Commission is confined to imposing arbitration results that are consistent with 251 obligations, and it therefore

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[12] *See Joint Petition for Arbitration of NewSouth Communications Corp. et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 04-00046, Transcript of Authority Conference at 12:19-14:7 (April 17, 2006) ("*TRA Conference Transcript*").

cannot impose the creation of exceptions to those obligations, as BellSouth has proposed and the Commission has in part accepted.[13]

The Commission's Order and the last sentence of its proposed language, *see Order* at 21, appears to encourage a "meeting of the minds" between the parties regarding the Agreement. For this very reason, the Commission's findings should be reconsidered and modified to adopt the Joint Petitioners' proposed language, or to at least strike the last sentence of the language adopted by the Commission, as it creates unnecessary ambiguity. As is their right, Joint Petitioners seek cover of Applicable Law, as defined in the Agreement, including Georgia contract law, the 1996 Act and the FCC's rules implementing it, to the extent they have not freely and voluntarily agreed to abide by other terms. *See* Section 32.1 of the General Terms and Conditions. The parties reached a "meeting of the minds" to define Applicable Law, as defined in Section 32.1. And furthermore, where the parties have reached a "meeting of the minds" to deviate from Applicable Law, the parties have expressly memorialized such deviation in the Agreement. There has been no "meeting of the minds" on exceptions or deviations from any other aspect of Applicable Law, including Section 251, other than what is expressly memorialized in the Agreement. Accordingly, whereas the Commission evidently wants to encourage a "meeting of the minds" by adopting alternative language, the decision, if not

[13] Joint Petitioners also respectfully submit that the Commission has misinterpreted the North Carolina Commission's decision in the NewSouth audit case. *See Order* at 19-20. Despite that Commission's contention, NewSouth did not argue that the entirety of the so-called "SOC" was incorporated into its interconnection agreement with BellSouth. Rather, it argued that those parts of the SOC that were not excluded, exempted or displaced by conflicting language were incorporated. The North Carolina Commission in fact adopted NewSouth's – and not BellSouth's—argument as to how the SOC applied in the context of the parties' interconnection agreement. The North Carolina Commission focused on two SOC provisions and found that one was displaced and the other (an independent auditor requirement) was incorporated because the Agreement was silent as to it. The North Carolina Commission's Order is, for a variety of reasons, the subject of an appeal currently before the United States Court of Appeals for the Fourth Circuit. *See NuVox Communs., Inc. v. Jo Anne Sanford, et al.*, Case 06-1312.

modified, will cause uncertainty as to the meaning of Applicable Law and will ultimately cause unnecessary disputes between the parties.

Joint Petitioners' Post-Hearing Brief explicates in detail the core legal doctrines that their proposed language is intended to replicate. *See* JP Br. at 36-38. To recap, the Supreme Court of Georgia has held that "[l]aws that exist at the time and place of the making of a contract, **enter into and form a part of it** ... and the parties must be presumed to have contracted with reference to such laws and their effect on the subject matter." *Magnetic Resonance Plus, Inc. v. Imaging Systems, Int'l*, 273 Ga. 525, 543 S.E.2d 32, 34-35 (2001)(emphasis added). This legal theory comports with contract law as viewed by the United States Supreme Court, which has held that "[l]aws which subsist at the time and place of the making of a contract ... **enter into and form a part of it** ...; this principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge." *Farmers' & Merchants Bank of Monroe, N.C. v. Federal Res. Bank of Richmond*, 262 U.S. 649, 660 (1923)(emphasis added). The Supreme Court also held more recently that such laws apply to the contract "as if fully they have been incorporated in its terms[.]" *Norfolk and Western Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117, 130 (1991). Further, although parties have the right to waive or repudiate elements of applicable law, these waivers and repudiations "**must be expressly stated** in the contract." *Jenkins v. Morgan*, 100 Ga. App. 561, 112 S.E.2d 23, 24 (1959) (emphasis added). Stated differently, parties are "presumed to contract under existing laws, and **no intent will be implied** to the contrary unless so provided by the terms of their agreement." *Jenkins*, 100 Ga. App. at 562 (emphasis added).

This body of law demonstrates that, contrary to the Commission's conclusion, there is a "meeting of the minds" and collective understanding in the interconnection agreement

as to what Georgia law, the governing law of the Agreement, requires. In particular, Joint Petitioners demand complete compliance with the requirements of Section 251, except whereby the parties have had a meeting of the minds and have memorialized in the Agreement terms that provide otherwise. As things stand with the *Order*, the Commission proposes to foist upon Joint Petitioners potential exceptions to and waivers of Section 251 obligations (and potentially other applicable law) that were never negotiated and for which there was no meeting of the minds. The Commission may not lawfully impose such a result under Section 252.

Accordingly, Joint Petitioners respectfully request that the Commission reconsider its *Order* and adopt the Joint Petitioners' position and proposed language for Issue 12. At a minimum, for the reasons set forth herein, the Commission should strike the final sentence of its proposed language. If ever the parties have a dispute about the requirements of the Agreement, they can always turn to the Commission for dispute resolution.

ISSUE NO. 97

Issue Statement: When should payment of charges for service be due?

Joint Petitioners respectfully request reconsideration of the Commission's decision and request that the Commission modify its decision to adopt Joint Petitioners' proposed language on this issue, as it is patently reasonable to start the 30 day window on the day BellSouth posts a bill electronically (or upon which the postal service or other courier service confirms delivery). The record shows that BellSouth, on average, takes 7 days to post or deliver a bill. *See* JP Br. at 53. *See also* JP Direct Test. at 82:17-20. It further shows that the continuation of the current regime, as proposed by BellSouth, subjects Joint Petitioners to

unpredictable and abbreviated times in which to review, pay, or dispute BellSouth's bills. *See* JP Br. at 52-53.

Contrary to the Commission's Order, the record also contains no evidence of necessary "modifications to BellSouth's billing systems" if Joint Petitioners' language is adopted. *Order* at 24. At best, the record contains a claim that unspecified changes would need to be made. *See* BST Brief at 47, *citing* FL Tr. at 902. Yet, nobody within BellSouth knows or has explained what is entailed or really how difficult it would be to make changes. Given that BellSouth has accepted the Georgia and North Carolina Commissions' decisions to impose a due date measured from receipt of bills (at least with respect to electronic bills), it is evident that the changes required would not be very difficult at all (indeed, the parties already operate under a North Carolina agreement with the modified payment due date).[14] In fact, it is ironic that both BellSouth and the Commission find Joint Petitioners' proposal to be "difficult to administer," *see Order* at 24; BST Brief at 47, when all Joint Petitioners request is what BellSouth evidently thinks is reasonable when it is the one making payments.[15]

Joint Petitioners note the several past and present arbitration proceedings where it has been recognized that CLECs need more time to review, dispute, and pay bills than the period typically demanded by BellSouth in its past interconnection agreements. In an Alabama proceeding between BellSouth and ITC^DeltaCom, an arbitration panel held that payment

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[14] BellSouth did not even seek reconsideration of the Georgia Commission's decision to set the payment due date as 30 days after the date the bill is sent out by BellSouth. *See Georgia Order* at 31.

[15] The record demonstrates that when measuring its own payment performance, BellSouth measures from the date it receives an invoice. *See* JP Brief at 54.

should be made 30 days "after the date the bill is sent out by BellSouth,"[16] and in a Georgia proceeding between the same parties, the Georgia Commission came to an identical conclusion.[17] The Georgia Commission has adopted this same finding in its parallel arbitration proceeding between Joint Petitioners and BellSouth.[18] Moreover, the Kentucky Commission, upon reconsideration, found in its parallel arbitration that "interconnection agreements between BellSouth and the Joint Petitioners should include language stating that payments for charges for service rendered are due 30 calendar days after BellSouth's issuance of the bills."[19] And in the Louisiana companion arbitration, the Administrative Law Judge has recommended that the "bill will be due 30 days after the date the bill is sent out by [BellSouth] in immediately available funds."[20] The North Carolina Commission, in its companion arbitration between Joint Petitioner's and BellSouth, ordered payment within 26 days of receipt of the invoice, which is the result it had ordered in the BellSouth/ITC^DeltaCom arbitration.[21] Given the Commission's reliance on other commission decisions when rending favorable decisions for BellSouth in the *Order*, it is disappointing that the Commission ignores here the vast number of decisions that

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16 *See* JP Brief at 80, *citing Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 28841, Arbitration Panel Recommendations at 53-56 (Ala. P.S.C. Apr. 27, 2004); *see also* JP Brief, Attachment 27.

17 *See id., citing Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 16583-U, Order at 15 (Nov. 20, 2003).

18 *See Georgia Order* at 29-31.

19 *See Joint Petition for Arbitration of NewSouth Communications Corp. et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended*, Case No. 2004-00044, Order at 21-22 (KY P.S.C. March 14, 2006) ("*KY Final Order*").

20 *See Proposed Recommendation* at 23.

21 *See NC Recommended Arbitration Order* at 77, *aff'd by NC Final Order* at 62; *see also* JP Brief, Attachment 28.

find CLECs require more time to review, dispute, and pay bills than that which BellSouth provides in its interconnection agreements.

These decisions indicate that state commissions recognize the industry has learned from the past ten years of local competition and that an expanded payment period (although only by a few days) lessens the operational burdens placed on CLECs. Local competition is still relatively young, as it has existed by law for just under a decade and the subject Agreement is merely a "third-generation" interconnection agreement. Only through the process of trial-and-error has the industry been able to discern better what time periods are necessary to review, process, dispute and pay bills in a manner that does not burden competitive operations. The local competitive environment has evolved and will continue to evolve, and the terms of interconnection agreement must be allowed to evolve with it. It would be naïve to think that terms put in place during the infancy of local competition, a time when contract provisions and competitive operations were raw and untested, need not evolve to better promote competition for the greater benefit (*e.g.*, lower costs) of the general public.

The Commission's decision does recognize the need for sufficient time to review, pay, and dispute bills, but the Commission's fifteen (15) day language modification just simply is not enough. *See Order* at 24 (modified language to read, "BellSouth *should* submit bills for mailing such that, under normal circumstances, bill delivery may be expected at least fifteen days prior to the payment due date")(emphasis added). Although Joint Petitioners appreciate the Commission's willingness to ensure sufficient time to review and pay bills, the fifteen days suggested is eleven or more days less than what other commissions have found appropriate. It

provides eight days less time than Joint Petitioners already get, on average,[22] and seven days less than even BellSouth offered in (unacceptable) language it proposed in its Post Hearing Brief.[23] The difference is quite considerable. Moreover, the Commission's modification provides no relief, nor any guidance whatsoever as to what shall take place, in the event BellSouth's bill delivery does not allow fifteen days before payment is due – *e.g.*, additional time to pay or BellSouth's waiver of late fees.

For these reasons, the Joint Petitioners request that the Commission reconsider its conclusion and adopt the language proposed by the Joint Petitioners for this issue. At the very least, the Commission should find that payment due dates will be adjusted and late payment charges will not apply for a number of days equal to the time in excess of *three* days it takes to deliver any bill.

ISSUE NO. 100

Issue Statement: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Service discontinuance is the most serious possible course of action for any utility. Service discontinuance affects not only the utility itself, but also the general public. This is why discontinuance is governed by both federal and state law. As Joint Petitioners noted in their Post Hearing Brief, Section 214 of the Communications Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the [FCC] a certificate[.]" JP Brief at 58, *citing* 47

22 *See* JP Test. at 82; JP Brief at 53.

23 *See* BellSouth Post-Hearing Brief at 51, n.193.

U.S.C. § 214(a). And as the FCC has held, "Section 214(a) has an essential role in the Commission's efforts to protect consumers. Unless the Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives." *In re Arbros Communications Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd. 3251, 3254 ¶ 7 (2003). Should BellSouth's position be adopted, South Carolina citizens will be subject to service termination without notice or Commission oversight, as BellSouth's proposal seeks to bootstrap amounts that may become past due on potentially hundreds of accounts on a single notice pertaining to an account where amounts already are past due. The Commission's adoption of BellSouth's position provides inadequate notice to Joint Petitioners and potentially no notice to South Carolina consumers by virtue of the bootstrapping mechanism built into BellSouth's proposal.

BellSouth's proposal also builds in guesswork, creates unnecessary confusion, and threatens the businesses of Joint Petitioners and their customers. BellSouth's notice will not state the full undisputed amount due on *all* accounts, but only the amount past due under one of hundreds of accounts. BellSouth then seeks to place the burden on Joint Petitioners to determine what undisputed amounts are owed on the account at issue, as well as on hundreds of other accounts that may become past due during the notice period. The complexity of this mathematical calculation is daunting enough; however, it is made impossible by the fact that Joint Petitioners have no control at all over when BellSouth recognizes disputed amounts or posts payments. Further adding to the "black hole" nature of this quandary is that the people at BellSouth who post disputes, as well as those who post payments, do not appear to communicate well with CLECs. So, if Joint Petitioners happen to miscalculate, or if they fail to guess the

timing of BellSouth posting of disputes and payments, then, under the *Order*'s ruling, BellSouth would have the right to terminate service not only to Joint Petitioners, but effectively to their South Carolina customers as well.

BellSouth's offer to provide, upon Joint Petitioner's request, information regarding the additional amounts owed does not solve the impossible calculation and timing issues outlined above. The *Order* ignores pertinent record evidence that demonstrates that when BellSouth provides the requested information, it is accompanied by the disclaimer: "Not an Official BellSouth Document." *See* JP Brief at 63. Thus, BellSouth alerts Joint Petitioners that the document is unreliable and that it provides no assurances that BellSouth will stand behind it, that it is accurate, or that BellSouth will not move to terminate service because someone within that ever-growing and sprawling corporate bureaucracy has a different "magic number" or goal in mind.

Given that the Commission relies to some degree on outcomes in the companion arbitrations, Joint Petitioners note that on this issue a majority of commissions ruled in Joint Petitioners' favor. The North Carolina Commission adopted Joint Petitioners' language for this issue.[24] The Kentucky Commission ruled in favor of Joint Petitioners, agreeing that it is inappropriate that Joint Petitioners' service would be suspended when, in fact, Joint Petitioners have paid the exact amount identified in BellSouth's written notice. The Kentucky Commission found that BellSouth should calculate the exact amount due and the date by which the amount must be received in order to avoid suspension of service, and if additional past due amounts are accrued, then BellSouth should send a written notice to Joint Petitioners specifying such

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[24] *See NC Recommended Arbitration Order* at 85, *aff'd by NC Final Order* at 66.

additional amounts.[25] *See KY Final Order* at 22. The Georgia Commission rejected BellSouth's proposal, noting that "Joint Petitioners raised legitimate concerns that there would be ambiguity and lack of notice about the precise amount owed."[26] The Tennessee Regulatory Authority has not released a final order in its companion arbitration between the parties, but the Authority has rendered a vote in the arbitration favoring Joint Petitioners on this issue.[27]

The risks associated with BellSouth's proposal are too great. A proper notice (and notice period *per account*) is the best way to ensure that BellSouth is paid, that Joint Petitioners are not coercively threatened with a disconnection shell game, and that consumers are not exposed to harms caused by BellSouth's desire to drive competitors out of the market (if its desire was simply to get paid, Joint Petitioners' proposal surely would suffice). The *Order* should therefore be modified to adopt Joint Petitioners' position and language for Issue 100. Joint Petitioners' language provides quite simply that either party may send a notice of nonpayment to the other, and may require such amounts "as indicated on the notice in dollars and cents" to be paid within 15 days to avoid suspension and within 30 to avoid termination. *See* JP Brief, Exhibit A at 11. This language eliminates the potential for unnecessary confusion and the grave harm that could fall upon South Carolina consumers should their service be terminated without notice. In the alternative, the Commission should modify its ordered language so that it applies on an account-by-account basis.[28] By doing so, the Commission can correct the problem

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25 *See KY Final Order* at 22.

26 *See Georgia Order* at 33.

27 *See TRA Conference Transcript* at 34:5-35:16.

28 As modified, the language would read: *If a CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all undisputed amounts* ***on the noticed account*** *that are past due as of the date of the pending suspension or termination action.*

of insufficient notice related to non-noticed accounts and can eliminate much of the complexity entailed when hundreds of accounts are involved. BellSouth currently bills and gets paid on an account-by-account basis. There is no need to have a termination for nonpayment provision work in any other way. Indeed, the public interest commands that it shouldn't.

ISSUE NO. 102

Issue Statement: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owned by BellSouth to CLEC?

CLECs are quite often owed considerable sums by BellSouth, often in the tens of millions of dollars. Xspedius witness, Mr. Falvey, has described how at one time BellSouth owed e.spire, the entity whose assets Xspedius purchased, $25 million that it refused to pay, and yet had demanded a service deposit from e.spire. Deposition of James Falvey at 318:21 – 319:21 (Dec. 16, 2004). There is no legitimate reason that any CLEC should pay a deposit when BellSouth is holding that CLEC's money already.

It is for this reason that various state commissions have held that deposit offsets are both reasonable and appropriate. *See* JP Br. at 71 (quoting *In the Matter of the Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b) of the Telecommunications Act of 1996*, Docket No. 05-BTKT-365-ARB, Arbitrators Determination of Issues ¶ 52 (Kan. Corp. Comm'n 2005); Decision of Administrative Law Judge, Docket No. 2004-493 (Okla. Corp. Comm'n 2005)). These commissions found that requiring an offset is simply the fair and appropriate resolution to the ILEC's combined poor payment history and large deposit requests. The rationale of these decisions applies in this case as well, as BellSouth has demonstrated a poor payment history and

a penchant for deposits. BellSouth cannot on the one hand withhold payments from Joint Petitioners and on the other hand expect Joint Petitioners to lock up additional amounts in deposits. All BellSouth need do to avoid an offset is to comply with the same "good payment history" standard that applies to Joint Petitioners.

For the foregoing reasons, Joint Petitioners request that the Commission reconsider its initial decision on this issue. At a minimum, the Commission should modify the *Order* to clarify that the Joint Petitioners' proposed language will be adopted with the caveat that offsets will pertain only to undisputed past due amounts.

ISSUE NO. 103

Issue Statement: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to nonpayment if CLEC refuses to remit any deposit required by Bellsouth within 30 calendar days?

The *Order* has, in essence, recommended the rejection of Joint Petitioners' language that would protect them – but more importantly, South Carolina customers – from complete service shutdown if Joint Petitioners fail to comply with BellSouth's deposit demands within 30 days. As Joint Petitioners have explained, BellSouth should not be entitled to terminate service to a Joint Petitioner for failure to pay a deposit within 30 days unless (1) the Joint Petitioner and BellSouth have agreed on a deposit amount, or (2) the Commission has ordered payment of the deposit. *See* JP Br. at 72-73. Suspension or termination of service is too grave a remedy for what amounts to a dispute over, or failure to agree on, the precise amount requested. And despite the fact that the parties agree on the general criteria for triggering deposits, the fact remains that legitimate disputes can often arise over the precise dollar amount

that is reasonable based on the circumstances (the criteria trigger a right to a deposit somewhere in the range above zero and up to the maximum amount permitted in the contract).

As Joint Petitioners previously briefed, any failure to agree should be considered a dispute – a dispute that BellSouth has every right to come to this Commission to seek resolution – even expedited resolution in the form of one of BellSouth's regular "emergency" requests. *See* JP Brief at 73. If for any reason, a BellSouth deposit request goes unanswered within 30 days, Joint Petitioners do not in any way oppose BellSouth's right to seek prompt relief at the Commission. This is the only way for the Commission to assess where the break-down in communications or responsibility lies. More importantly, this is the only way for the Commission to ensure that service to a Joint Petitioner is not improperly suspended or terminated (for, perhaps, a misrouted notice or one that was inadvertently overlooked). Even more importantly, this is the only way for the Commission to ensure that service to Joint Petitioners' South Carolina customers is not improperly and unlawfully suspended or terminated, possibly without notice.

The services provided to South Carolina consumers and businesses hang in the balance on this issue, and therefore Joint Petitioners respectfully request that the Commission reconsider its *Order* and adopt Joint Petitioners' position and language for Issue 103.

CONCLUSION

The foregoing considered, Joint Petitioners respectfully request reconsideration of the Commission's *Order* on issues 4, 5, 6, 9, 12, 97, 100, 102, and 103. Joint Petitioners further request that the Commission, upon reconsideration, adopt Joint Petitioners' language for these issues.

Respectfully submitted, this 23rd day of October, 2006.

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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
NewSouth Communications, Corp.,	)	
NuVox Communications, Inc.,	)	
KMC Telecom V, Inc.,	)	**CERTIFICATE OF SERVICE**
KMC Telecom III LLC, and	)	
Xspedius [Affiliates] of an	)	
Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934,	)	
as Amended	)	

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Reconsideration** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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Carol Roof

October 23, 2006
Columbia, South Carolina